IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/07/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

Criminal Appeal No.995 of 2000

1. Ramasamy

2. Kaliappan .. Appellants

-Vs-

The State of Tamil Nadu,
rep. by Inspector of Police,
Palacode Police Station,
Palacode, Dharmapuri District.
(Cr. No.623 of 1992). .. Respondent

Appeal against the judgment of the learned II Additional Sessions Judge, Dharmapuri District at Krishnagiri, made in S.C.No.19 of 2000 dated 27.9.2000.

!For Appellant : Mr.R.Sankarasubbu

^For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor.

:J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR, J.)

The appellants, two in number, who were tried as A-1 and A-2 before the learned II Additional Sessions Judge, Krishnagiri in Sessions Case No.19 of 2000, were convicted by the trial Court. A-1 was convicted under Section 302 I.P.C. and A-2 was convicted under Section 302 read with 34 I.P.C. and on being convicted, each one of them was sentenced to imprisonment for life and was also directed to pay a fine of Rs.1,000/- with a default sentence of one year simple imprisonment. The above conviction and sentence are under challenge in this appeal.

2. The case of the prosecution as could be discerned from the oral and documentary can be briefly summarised as follows:-

The deceased Lakshmi is the wife of A-1 and P.W.5 is the concubine of A-1. A-2 was an employee under A-1. P.W.3 is the brother of the deceased and P.W.7 is the elder brother of A-2. The accused and the deceased were living at Bangalore af arriage and they used to visit P.W.3. On 9.5.92, the deceased went to Vathiyamarathahalli to visit her brother, P.W.3. She complained to P.W.3 that her husband is ill-treating her on a suspicion that she is in illicit relationship with one Dharmalingam. P.W.3 told the deceased that he will ask the accused about his conduct. At about 4.00 p.m., she left the village for Bangalore. She informed P.W.3 that she will return to the village along with her husband, as he had to execute a sale deed of a property, which he has already sold. A-1 went to the village of P.W.3 on 11.5.92 and executed the sale deed and went away. P.W.3 came to know that her sister had run away with someone. P.W.3, therefore, accompanied by his father, went to Bangalore to find out as to what happened and in the house of A-1, they found A-2, P.Ws.4 and 5. P.W.3 questioned them and came to know that his sister had run away with someone. P.W.3, therefore, went to the house of another sister, Vijaya, but could not get any definite details about the deceased. P.W.3, along with his father, returned to the village. Though, they thought of going to the police station to lay a complaint, they did not do so. In the meantime, on 12.5.92, P.W.2, the Village Administrative Officer, when he was in the office, was informed that a dead body of a woman is floating in a well belonging to one Madhan @ Mariappan. This information was given to him by the said Madhan. This was reduced into writing. The said complaint of Madhan is Ex.P.1. (The said Madhan, during the trial, was not alive and therefore, he was not examined, as could be seen from the evidence of P.W.1). P.W.2 went to the well and found the dead body of a woman aged about 25 years floating and on the dead body, a green colour saree and a black blouse was seen. P.W.2 went to the police station and gave the information about his seeing the dead body. P.W.14, the head constable of Palacode police station, on getting the information from P.W.2, registered a case in Crime no.623 of 1992 under Section 174 Cr.P.C. A copy of the printed first information report is Ex.P.8. He took up investigation in the case and reached the scene of occurrence. He prepared an observation mahazar, Ex.P.2 and drew a rough sketch, Ex.P.7. The dead body was brought out of the well and inquest was conducted in the presence of panchayatdars. At the time of inquest, Madhan and some others were examined, whose statements were recorded. Ex.P.9 is the inquest report. After the inquest, the body was sent to the hospital for autopsy.

3. On receipt of the requisition, P.W.8, the Civil Surgeon attached to Government Hospital, Palacode, conducted autopsy on the body of Lakshmi and found the following:-

A body of a female lying on its back with the arms by the sides, skin peeling present. Blood stained discharge from the nostrils and mouth present. No discharge from other natural orifices. Ear lobes, lips, eyelids - fish eaten. No external injuries. Hyoid bone intact. Ribs no fracture. Heart weight normal. C/o. All the chambers empty. Lungs: Balooned out. C/s.

Haemorrhagic. Trachea c ontains about 200 ml. of water. Abdomen: Distended. Stomach weight normal. Contains about 400 ml. of water. Spleen weight normal. C/s. congestion present. Liver weight normal C/s. congestion present. Kidneys weight normal. C/s. congestion present. Intestine weight normal. C/s. congestion present. Urinary bladder contains about 100 ml. of urine. Uterus weight normal. Cut section empty. Head skull bones intact. Brain weight normal. C/s. congestion present.

The doctor issued Ex.P.6, the post-mortem certificate, with her opinion that the deceased died on account of drowning about 24 to 30 hours prior to autopsy.

4. In the meantime, P.W.3 searched for his sister, but could not get any information and therefore, went to Palacode police station, though he was living within the jurisdiction of Papparapatti and informed about the missing of his sister. P.W.16, the Sub-Inspector of Police of Palacode police station, showed the photographs of the dead body and the clothes, which were found on the dead body to P.W.3. They were identified by P.W.3 and thereafter, the crime was altered to one under Section 302 I.P.C. and Ex.P.12 is a copy of the printed first information report in the altered crime. A copy of the printed first information report was sent to the Inspector of Police, P.W.17. In the meantime, P.W.17, who took over investigation from P.W.14, went to Bangalore and questioned witnesses. He also seized M.O.13, a compliant given by A-1 at Payal police station, Bangalore, complaining about the missing of his wife. On 25.5.92, A-2 appeared before P.W.6, the Village Administrative Officer of Jagadalapuram. He gave a statement stating that he and his employer committed the murder of Lakshmi by pushing her into the well. The said statement given by A-2 was reduced into writing and the same stands marked as Ex.P.4. P.W.6 handed over Ex.P.4 and the second accused at Palacode police station. P. W.17, remanded the second accused to custody. On 26.5.92, he questioned Natarajan and recorded his statement and A-1 was arrested by P.W.1 6, the Sub-Inspector of Police, at about 5.00 a.m. on 30.5.92, when he was standing near a bus stop at Thottalampatti. A-1 gave a statement. He was brought to the police station and later, sent to Court for remand. P.W.17, in the meantime, questioned other witnesses and recorded their statements and on 10.10.94, filed the final report against the accused under Section 302 read with 34 I.P.C.

5. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them. They denied all the incriminating circumstances. They did not examine any witness on their side.

6. The prosecution, before the trial court, examined P.W.8 to establish the cause of death of Lakshmi and according to him, Lakshmi died on account of drowning. The accused also do not dispute that she died on account of drowning. But the question that is to be decided by this Court is whether she was pushed into the well and drowned or it was an accidental fall, leading to her death on account of drowning, since, admittedly, the well had no parapet wall.

7. The prosecution before the trial Court came out with a

version that A-1, helped by his employee, A-2, committed the murder of his wife by pushing her into the well and to prove the said fact, it relied upon circumstantial evidence. The principles governing circumstantial evidence is, by now, well settled and the prosecution has to prove all the links in the chain of circumstances and if it fails to establish even one link in the chain of circumstances, the case of the prosecution is to be rejected.

8. According to P.W.3, the elder brother of the deceased, the deceased visited him about three or four days prior to the date of incident and complained to him that her husband is suspecting her fidelity and that she will return to the village along with her husband, who has to execute a sale deed in respect of a land, which was already conveyed. P.W.3 has further deposed that his sister did not come to the village along with her husband and therefore, he made enquiries and came to know that she has eloped with someone. He made attempts to trace her by going to Bangalore and other places, but could not get any definite information about the whereabouts of his sister. While the matter stood thus, a dead body of a woman was seen floating in the well of Madhan, which fact was promptly conveyed by the said Madhan to P.W.2, the Village Administrative Officer. P.W.2 gave a complaint at Palacode police station and the dead body was taken out and sent for post-mortem. At that time, the identity of the dead body of the woman, which was taken out of the well, was not identified and later, the identity of the dead body came to be established when P.W.3 went to Palacode police station on 23.5.92 to inform the police officials about the missing of his sister. The officer, P.W.16, thereafter, altered the crime to one under Section 302 I.P.C. and the same was sent to the Inspector of Police.

9. The facts, which we have narrated above, do not show that either of the accused committed the murder of the deceased and the only circumstance, which we have to consider is the alleged statement, Ex.P.4, said to have been given by A-2 to P.W.6, on 25.5.92. P.W.6 is the Village Administrative Officer of a different village and according to him, when he was in his office, at noon, A-2, accompanied by his brother, P.W.7 (who turned hostile), appeared before him and gave a statement implicating himself and his employer, A-1, saying that he and A-1 pushed the deceased into the well. This statement, Ex.P.4 and A-2 were produced before the officer, who remanded A-2 to custody. We have perused Ex.P.4 and also the evidence of P.W.6 and from the evidence of P.W.6, it could be seen that he was running his office in a building, which was adjacent to the police station. It is not known as to why A-2, on 25.5.92, should appear before a total stranger, P.W.6 and give a statement implicating himself and A-1 with the crime. It is not as if the police were suspecting him and searching for him. The statement, Ex.P.4, runs to several pages and contains several details and it creates an impression that it must have been prepared at the instigation of someone, in which his signature was obtained.

10. There is yet another circumstance to suspect that Ex.P.4 could not have been given voluntarily by A-2. According to P.W.16, P.W.3 appeared before him on 23.5.92 and thereafter, he altered the crime to one under Section 302 I.P.C. He has marked Ex.P.12 as the express report in the said altered crime. A perusal of Ex.P.12, the altered F.I.R., shows that in

the said report, the officer has stated that P.W.3 informed him that on 11.5.92, his sister w as murdered by his brother-in-law helped by his employee, Kaliappan, meaning A-2, by pushing her into the well and that they have absconded after that. Though, in the said report, it is found mentioned that P.W.3 informed him about the murder of his sister by his brother-in-law, helped by his employee, P.W.3, in his evidence, did not even mention that he gave such an information to the officer on that day. Therefore, it is not known as to how the officer made such a statement in the report. It is nobody's case that on 23.5.92, P.W.3 knew that his sister was murdered by A-1 with the help of A-2. Even if it is to be assumed that P.W.3 suspected that A-1 could have murdered his sister, he could not have certainly suspected that A-2 could have helped A-1 in the murder of his sister. The fact that the name of A-2 is seen mentioned in the altered express report, Ex.P.12, which is dated 23.5.92, itself is an indication that Ex.P.4, which, according to the prosecution, came on 25.5.92 cannot be true and this must have been prepared by the police to suit the prosecution version. We, therefore, do not place any reliance upon Ex.P.4.

11. It is also to be remembered that the said statement of A-2 cannot be put against A-1, since a statement of a co-accused can be looked into as against other accused to lend assurance if there are other circumstances. The prosecution did not let in any evidence to show that A-1 committed the murder of his wife with the help of A-2 and we are unable to accept Ex.P.4, the alleged statement of A-2, as voluntary. We, accordingly, acquit A-1 and A-2 of the charges, under which they were convicted.

12. In the result, the appeal is allowed and the conviction and sentence imposed upon the appellants/accused by the learned II Additional Sessions Judge, Krishnagiri, in Sessions Case No.19 of 2000 are set aside and they are acquitted. It is reported that A-2 is in jail. If so, he is directed to be released forthwith, unless he is required in connection with any other case. The bail bonds, if executed by A-1, shall stand cancelled. The fine amount, if paid, shall be refunded to them.

Index: Yes
Website: Yes

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To

1.The II Additional Sessions Judge, Dharmapuri.

2.-do- Thro' The Principal Sessions Judge, Dharmapuri.

3.The Judicial Magistrate, Palacode.

4.-do- Thro' The Chief Judicial Magistrate, Dharmapuri at Krishnagiri.

5.The District Collector, Dharmapuri.

6.The Director General of Police, Chennai.

7.The Superintendent, Central Prison, Vellore.

8.The Inspector of Police, Palacode Police Station, Palacode, Dharmapuri District.

9.The Public Prosecutor, High Court, Madras.